



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/639,426 08/15/00 BARCLAY W 2997-1-3-1-3

MICHAEL L TOMPKINS
SHERIDAN ROSS P C
1560 BROADWAY
SUITE 1200
DENVER CO 80202-5141

HM22/0619

EXAMINER

WARE, D

ART UNIT

PAPER NUMBER

1651

DATE MAILED:

06/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/639,426

Applicant(s)

Barclay

Examiner

Ware

Art Unit

1651



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 26, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-47 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

Art Unit: 1651

Claims 38-47 are presented for reconsideration on the merits.

The amendment filed March 26, 2001, has been received and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 38-47 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Ulken et al. for those reasons set forth in the previous office action of December 20, 2000, note pages 2-3.

Applicant's arguments filed March 26, 2001, have been fully considered but they are not persuasive. The argument directed to the culturing of the microflora in a culture medium containing a non-chloride sodium salt as a primary source of sodium ion is not deemed persuasive. The claimed composition only requires those microorganisms of the order Thraustochytriales and preferably selected from the group consisting of Thraustochytrium, Schizochytrium and mixtures thereof. Further, specific strains of these two genera are also preferred. The other limitations regarding the culture of such microorganisms are not contained by the composition as claimed. The culture medium contains these ingredients such as a non-chloride salt and the claimed composition does not appear to contain these ingredients. The claimed composition is not defined by a non-chloride salt because it does not contain this salt. Further, Ulken clearly teaches that these microorganisms may be grown using salt. Note the abstract, wherein it may be noted that the microflora are found in areas of high salinity. Thus, any salt whether it be non-chloride salt or other salt would have been expected to provide a

Art Unit: 1651

successful culture of these microflora. Applicants appear to concede that the reference does at least suggest the use of microflora of the order Thraustochytriales as well as the claimed genera as a feed for other organisms. A product must stand on its own for patentability. The product as claimed only contains microflora of a specified order. These microflora are taught by the cited reference. Therefore, the product as claimed are obvious from the disclosure of Ulken since a feed composition is clearly suggested, if not taught, by the cited prior art reference.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

Art Unit: 1651

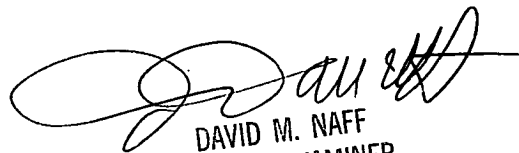
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


Deborah K. Ware

A.U. 1651

June 16, 2001


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651